

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAYME R.,

Plaintiff,

v.

8:21-CV-1002
(ML)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

SCHNEIDER & PALCSIK
Counsel for the Plaintiff
57 Court Street
Plattsburgh, New York 12901

MARK A. SCHNEIDER, ESQ.

SOCIAL SECURITY ADMINISTRATION
Counsel for the Defendant
6401 Security Boulevard
Baltimore, Maryland 21235

MOLLY CARTER, ESQ.
Special Assistant U.S. Attorney

MIROSLAV LOVRIC, United States Magistrate Judge

ORDER

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on March 3, 2023, during a telephone conference conducted on

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

ORDERED as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 11) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 15) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is AFFIRMED.
- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: March 7, 2023
Binghamton, New York

A handwritten signature in black ink, reading "Miroslav Lovric", written over a horizontal line.

Miroslav Lovric
United States Magistrate Judge
Northern District of New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

J.R.
vs. 8:21-CV-1002
COMMISSIONER OF SOCIAL SECURITY

Transcript of Decision and Order

March 3, 2023

via Teams Teleconference

The HONORABLE MIROSLAV LOVRIC Presiding.

A P P E A R A N C E S

For Plaintiff: Mark Schneider, Esq.

For Defendant: Molly Carter, Esq.

*Ruth I. Lynch, RPR, RMR, NYSRCR
Official United States Court Reporter
Binghamton, New York 13901*

1 THE COURT: And so the Court begins its reasoning,
2 analysis, and decision as follows:

3 Plaintiff here in this matter has commenced this
4 proceeding pursuant to 42 United States Code Section 405(g)
5 to challenge the adverse determination by the Commissioner
6 of Social Security finding that he was not disabled at the
7 relevant times and therefore ineligible for the benefits
8 that he sought.

9 By way of background, the Court begins as follows:
10 Plaintiff was born in 1981 and is currently 41 years of age.
11 He was 36 years old at the alleged onset of his disability
12 on October 1 of 2018. The Court notes that the ALJ denied
13 Plaintiff's request to amend the alleged onset date to
14 February 25 of 2019. Plaintiff has not challenged that
15 denial here on appeal.

16 At the time of his administrative hearing on
17 February 25th, 2021, Plaintiff lived with his wife and his
18 mother. He had a 14-year-old son who did not reside with
19 Plaintiff.

20 Plaintiff stands approximately 5 feet 9 inches in
21 height and weighs approximately 195 pounds.

22 Plaintiff is a high school graduate who attended
23 regular education classes and also completed courses in
24 electrical installation and design. Plaintiff's work
25 history included laborer positions in construction,

1 forestry, and manufacturing.

2 Procedurally the Court notes as follows, as far as
3 this case is concerned. Plaintiff applied for Title II
4 benefits on December 16, 2019, alleging an onset date of
5 October 1, 2018. In support of his claim for disability
6 benefits, Plaintiff claims disability based on type 1
7 diabetes, cirrhosis of the liver, depression, anxiety,
8 bipolar disorder, and also intermittent rage disorder.

9 Administrative Law Judge Asad M. Ba-Yunus
10 conducted a hearing on February 25th of 2021 to address
11 Plaintiff's application for benefits. ALJ Ba-Yunus issued
12 an unfavorable decision on March 12th of 2021. That
13 decision became the final determination of the Agency on
14 September 9th, 2021, when the Appeals Council denied
15 Plaintiff's request for review.

16 This action was commenced on September 10, 2021,
17 and it is therefore timely.

18 In his decision, ALJ Ba-Yunus first determined
19 that Plaintiff met the insured status requirements of the
20 Social Security Act through December 31, 2020, and then the
21 ALJ applied the familiar five-step test for determining
22 disability.

23 At step one, the ALJ concluded that Plaintiff had
24 not engaged in substantial gainful activity from his alleged
25 onset date of October 1, 2018, through the date of the last

1 insured.

2 At step two, ALJ Ba-Yunus concluded that Plaintiff
3 had the following severe impairments through the date last
4 insured, those impairments being attention deficit
5 hyperactivity disorder, anxiety disorder, depression,
6 substance abuse disorder in remission, diabetes, and liver
7 cirrhosis.

8 At step three, ALJ Ba-Yunus concluded that through
9 the date last insured, Plaintiff did not have an impairment
10 or combination of impairments that met or medically equalled
11 the severity of one of the listed impairments in 20 CFR
12 Sections 404.1520(d), also 404.1525, and 404.1526, and the
13 ALJ focusing on listing 5.05 which deals with chronic liver
14 disease, 12.04 which deals with depressive, bipolar, and
15 related disorders, listing 12.06 which deals with anxiety
16 and obsessive compulsive disorders, and listing 12.11 which
17 deals with neurodevelopmental disorders.

18 The ALJ also considered whether Plaintiff's
19 diabetes met or medically equalled a number of listings in
20 accordance with Social Security Ruling (SSR) 14-2p.

21 Next, the ALJ determined that through the date
22 last insured, Plaintiff had the residual functional capacity
23 to perform less than the full range of light work.
24 Specifically, Plaintiff, pursuant to the ALJ's decision,
25 Plaintiff was limited to unskilled, simple, and routine

1 tasks, could tolerate occasional changes to a routine work
2 setting, and could have occasional interaction with the
3 general public. The ALJ based his RFC determination in part
4 on the persuasive opinions of state agency consultants
5 Dr. Putcha, Dr. Siddiqui, Dr. Walker, and Dr. Hennessey, as
6 well as those portions of the partially persuasive opinions
7 of Consultative Psychiatric Examiner Dr. Brett Hartman and
8 Nurse Practitioner Sarah Howell supporting moderate physical
9 and mental functional limitations. The ALJ rejected the
10 opinion of Consultative Examiner Dr. Rita Figueroa that
11 Plaintiff had no physical limitations as inconsistent with
12 the broader medical record, but the ALJ considered
13 Dr. Figueroa's objective examination findings as part of the
14 RFC analysis.

15 At step four, the ALJ relied on the vocational
16 expert testimony to determine that Plaintiff was capable of
17 performing past relevant work as an assembler of electrical
18 accessories as that job was generally performed. Again
19 relying on the vocational expert testimony, the ALJ made the
20 alternative finding that, considering Plaintiff's age,
21 education, work experience, and residual functional capacity
22 through the date last insured, the ALJ concluded that there
23 were jobs that existed in significant numbers in the
24 national economy that Plaintiff could have performed. More
25 specifically, the vocational expert testified that Plaintiff

1 could have performed the requirements of representative
2 occupations such as small products assembler, housekeeping
3 cleaner, and routing clerk. Accordingly, the ALJ found that
4 Plaintiff was not disabled from the alleged onset date
5 through the date last insured.

6 Turning now to the plaintiff's arguments in this
7 case. Now, as the parties know, this Court's functional
8 role in this case is limited and extremely deferential. The
9 Court must determine whether correct legal principles were
10 applied and whether the determination is supported by
11 substantial evidence, which is defined as such relevant
12 evidence as a reasonable mind would find sufficient to
13 support a conclusion. As the Second Circuit noted in
14 *Brault V. Social Security Administration Commissioner*, found
15 at 683 F.3d 443, a 2012 case, and therein the Second Circuit
16 stated the standard is demanding, more so than the clearly
17 erroneous standard. The Court in *Brault* noted that once
18 there is a finding of fact, that fact can be rejected only
19 if a reasonable fact-finder would have to conclude
20 otherwise.

21 Plaintiff in this case raises several arguments
22 and contentions. First, Plaintiff argues that the ALJ erred
23 at step two by not finding Plaintiff's chronic pain syndrome
24 to be a severe impairment. Plaintiff also argues that the
25 ALJ failed to properly evaluate the medical opinion

1 evidence. Plaintiff also argues that the ALJ erred by
2 failing to find that Plaintiff met or medically equalled a
3 listed impairment. And Plaintiff also argues that the ALJ
4 failed to adequately credit Plaintiff's testimony regarding
5 his functional limitations.

6 The Court begins its analysis and reasoning and
7 ultimate decision as follows:

8 First, this Court finds that the ALJ's step two
9 determination was, in fact, supported by substantial
10 evidence for the reasons set forth in Defendant's brief, and
11 the Court adds the following analysis. Plaintiff did not
12 meet his burden of establishing that his diagnosed chronic
13 pain syndrome rose to the level of a severe impairment
14 because Plaintiff did not identify any record evidence
15 showing the impairment imposed significant physical or
16 mental functional limitations. It is well established that
17 a mere diagnosis does not establish the severity of the
18 impairment. Moreover, even if the ALJ had erred in
19 excluding chronic pain syndrome as a severe impairment, such
20 error would be harmless, as the ALJ's RFC analysis included
21 a thorough review of Plaintiff's physical and mental health
22 treatment history that he reasonably characterized as
23 "unremarkable" and "benign." In particular, this Court
24 notes that multiple mental health progress reports indicate
25 that Plaintiff's chronic pain syndrome was "managed" with

1 his current treatment protocol. See administrative
2 transcript at 681, 685, 689, and 888.

3 Next, similarly, for the reasons set forth in
4 Defendant's brief, the Court finds that substantial evidence
5 supports the ALJ's evaluation of the medical opinion
6 evidence addressing Plaintiff's physical and mental
7 impairments, and the Court adds the following analysis.
8 Plaintiff contends that the ALJ inappropriately rejected the
9 most restrictive portions of the relevant medical opinions,
10 namely psychiatric -- Psychiatric Consultative Examiner
11 Dr. Hartman's opinion that Plaintiff had moderate to marked
12 limitations with regard to using reason and judgment,
13 sustaining concentration, and regulating his emotions, and
14 also the treating Nurse Practitioner Sarah Howell's opinion
15 that Plaintiff had marked limitations in interacting with
16 others and adapting to the workplace. In formulating
17 Plaintiff's RFC, the ALJ was not required to accept every
18 limitation in the various medical opinions, nor was the ALJ
19 required to craft an RFC mirroring a particular opinion.
20 Here, the ALJ reasonably evaluated the persuasiveness of the
21 various opinion evidence by comparing the opinions to the
22 longitudinal medical record and found no support for such
23 marked restrictions in the consultative examination results,
24 treatment notes, or Plaintiff's daily activities.

25 Because the ALJ's evaluation of the persuasiveness

1 of these medical opinions was supported by substantial
2 evidence, this Court necessarily rejects Plaintiff's
3 contention that the ALJ should have found that the
4 restrictive limitations opined by Dr. Hartman and Nurse
5 Practitioner Howell render Plaintiff per se disabled
6 pursuant to listings 12.04, 12.06, 12.07, and 12.15.

7 Next, Plaintiff further contends that the ALJ
8 mischaracterized the opinion of Licensed Medical Social
9 Worker David Rasmussen, who provided counseling to
10 Plaintiff. This argument does not present grounds for
11 remand. LMSW Rasmussen's opinion is a one-paragraph
12 narrative, narrative summary of Plaintiff's medical history
13 but does not identify any particular mental or physical
14 functional limitations. See transcript administrative
15 record 862, at page 862, I should say. To the extent that
16 the ALJ did not accurately describe Mr. Rasmussen's opinion
17 that Plaintiff's mental impairments impacted his physical
18 health and precluded any work at the current time, any error
19 is harmless because such determination about the inability
20 to work is reserved to the Commissioner. And the ALJ's
21 decision otherwise demonstrates an appropriate evaluation of
22 the record evidence addressing the combined effect of
23 Plaintiff's mental and physical impairments.

24 Next, Plaintiff also contends that even if the ALJ
25 had substantial evidence to support only moderate

1 limitations with regard to maintaining attention and
2 concentration that these limitations are not adequately
3 addressed in the RFC determination. The Court rejects this
4 argument, as it is well established that a limitation to
5 unskilled light work consisting of unskilled and routine
6 tasks with only occasional changes adequately addresses such
7 limitations. Defendant's brief includes a number of cases
8 within the Second Circuit upholding such an approach.

9 Finally, Plaintiff contends that the ALJ failed to
10 adequately credit Plaintiff's testimony regarding his mental
11 health limitations. Recognizing that a claimant's
12 subjective description of his symptoms cannot alone
13 establish disability and that a reviewing court must give
14 great deference to the ALJ's assessment of hearing
15 testimony, this Court finds that the ALJ marshalled
16 substantial evidence to discount Plaintiff's testimony in
17 the form of Plaintiff's daily activities, the medical
18 opinion evidence, and the longitudinal treatment record
19 showing improvement in Plaintiff's symptoms as he progressed
20 with his medical treatment and sobriety. Although Plaintiff
21 highlights evidence that may support his position, as long
22 as the ALJ's position is supported by substantial evidence,
23 which in this case it is, this court must affirm the
24 Commissioner's disability determination.

25 Therefore, as a result of this analysis and the

1 reasoning set forth herein, Plaintiff's motion for judgment
2 on the pleadings is denied. Defendant's motion for judgment
3 on the pleadings is granted. Plaintiff's complaint is
4 hereby dismissed. And the Commissioner's decision denying
5 Plaintiff benefits is hereby affirmed.

6 This constitutes the decision and the reasoning
7 and analysis of the Court.

8 - - - - -
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25